IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.16511 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMSHIBHAI KANABHAI VARTORIYA

Versus

SECRETARY REVENUE DEPTT.

Appearance:

1. Special Civil Application No. 16511 of 2003

MR VK JOSHI for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent Nos. 1-4

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 16/07/2004

ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned AGP, appears and waives service on behalf of the respondent Nos.1 to 4. With the consent of the parties, the matter is taken up for final hearing today.

2. The petitioner, who is the owner of the land bearing Survey No.29 admeasuring 9 Acres and 24 Gunthas situated at Village Dared, District Jamangar, moved an application before the Mamlatdar, Jamnagar converting the land from new tenure to old tenure and for change of purpose from agricultural to non-agricultural use. The Mamlatdar, Jamnagar sent its recommendations by order dated 17-01-1996. Thereafter, the Collector, Jamnagar by his order dated 05-02-1996 granted the said application of the petitioner and directed the petitioner to pay an amount of Rs.2,96,945/- by way of premium, which the petitioner has paid.

3. It seems that before passing the order dated 05-02-1996, prior approval of the State Government was not obtained and, therefore, the Collector, Jamnagar by his order dated 07-06-1996 reviewed his order and withdrawn the order dated 05-02-1996. Against the said order dated 07-06-1996, the petitioner preferred a Revision Application No.9 of 1996 before the State Government i.e. Secretary (Appeals). The Secretary (Appeals) by order dated 06-03-1997 partly allowed the revision application by quashing and setting aside the order dated 07-06-1997 passed by the Collector, Jamnagar by which the order dated 05-02-1996 was withdrawn and directed the Collector to send a proposal to the State Government for obtaining necessary post approval from the State Government and till then the order passed by the Collector, Jamnagar dated 05-02-1996 was stayed.

4. It seems that on the basis of the judgement and order dated 06-03-1997 of the revisional authority passed in Revision Application No.9 of 1996, the Collector, Jamnagar sent his proposal to the State Government for its approval and by communication dated 19-02-1999 the Collector, Jamanagar was also directed to submit further documents. In the meantime, the Dy. Town Planner has fixed the valuation of the land in question at Rs.110/per sq. mtrs. as on 12-01-1999 and on the basis of that the Mamlatdar, Jamnagar has directed the petitioner to give in writing that he is ready and willing to pay the said amount. Against the said order, the present petition has been preferred by the petitioner.

4. Mr.Joshi, learned advocate for the petitioner, submitted that when the application was submitted in the year 1996 and in fact the order came to be passed in favour of the petitioner in the year 1996, more particularly, on 05-02-1996 directing the petitioner to pay an amount of Rs.2,96,945/- by way of premium, which

amount the petitioner has already paid and only on the technical ground the order was withdrawn. However, subsequently, the learned Special Secretary (Appeals), Revenue Department, by exercising revisional jurisdiction directed the Collector, Jamangar to send a proposal to the State Government which is still pending and, therefore, there is no question of directing the petitioner to agree upon to pay the market price as on 1999. He has also submitted that as such the proposal which is sent by the Collector, Jamnagar is also pending before the Revenue Department.

5. Heard the learned advocate for the respective parties.

6. Mr.Joshi, is right in his submission that there is no question of payment of premium considering the market price as on 1999. There was no question agreeing by the petitioner to make payment of premium considering market price as on 1999 as determined by the Dy. Town Planner and the communication by the Mamlatdar directing the petitioner to give in writing that he is ready and willing to pay the market price as determined by the Dy. Town Planner which is absolutely illegal and arbitrary. The proposal sent by the Collector for granting the approval as per the order dated 06-03-1997 passed by the learned Dy. Secretary (Appeals) in Revision Application which is already pending. What is pending before the State Government, Revenue Department is granting the approval of the order dated 05-02-1996. Therefore, there is no question in payment of premium by the petitioner considering the market price on subsequent date.

7. In view of the fact that the proposal sent by the Collector, Jamnagar pursuant to the judgment and order 06-03-1997 passed by the revisional authority in Revision Application No.9 of 1996 is still pending before the State of Gujarat, Revenue Department (Appeals), the Secretary (Appeals), Revenue Department, State of Gujarat is directed to decide and dispose of and to accord the approval of the order passed by the Collector, Jamnagar dated 05-02-1996 in accordance with law, as early as possible, preferably within 02 (two) months from the date of receipt of this order considering the observations made by this Court in the aforesaid order.

8. With this observations and directions, the present petition is disposed of. Rule made absolute to the aforesaid extent. D.S. permitted.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'
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